

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

TYLER DIVISION

DATE: April 29, 2010

JUDGE
LEONARD DAVIS

COURT REPORTER
Judy Werlinger

Law Clerks: Natalie Alfaro

SOVERAIN SOFTWARE, LLC vs. NEWEGG, INC. LTD	CIVIL ACTION NO: 6:07-CV-511 Jury Trial - Day 4
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ATTORNEYS FOR PLAINTIFF	ATTORNEYS FOR DEFENDANTS
Kenneth Adamo (Jones Day) Tom Giannetti (Jones Day) Barry Satine (Jones Day) Clark Craddock (Jones Day) Carl Roth (Roth Firm) Michael Smith (Siebman Reynolds) Katherine Wolanyk - Client Representative	Dick Sayles (Sayles Werbner) Mark Strachan (Sayles Werbner) Kent Baldauf (The Webb Lawfirm) Dave Hanson (The Webb Lawfirm) Claudia Frost (Pillsbury Winthrop Shaw Pittman) Lee Cheng (Newegg) Mira Wolff (Newegg)

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 8:35 am

ADJOURN: 6:25 pm

8:35 am	Trial resumed. Jury seated in the courtroom.
	Mr. Sayles addressed the Court on Exhibits, and on 4.28.09, Defendant's Exhibits 1 & 50 , were offered and admitted. Today, Mr. Sayles offers Defendant's Exhibits #2-6, 156, 488, 495, 501, 504 and 505 . Court admitted these exhibits. Mr. Sayles tendered to the Court Defendant's Exhibit List #2 .
	Mr. Adamo addressed the Court and tendered Plaintiff's Exhibit List # 3 , and offered Plaintiff's Exhibit #16, 17, & 27A . Court admitted these exhibits.
	Mr. Baldauf called EDWARD TITTEL to the witness stand. Witness previously sworn.
	Direct examination of Mr. Tittel by Mr. Baldauf.
10:20 am	Court asked counsel to approach bench. (Bench conference held).
10:25 am	Court in recess until 10:40 am

DAVID J. MALAND, CLERK

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BY: Rosa L. Ferguson , Courtroom Deputy

10:45 am	Trial resumed. Jury seated in the courtroom.
	EDWARD TITTEL on the witness stand. Cross examination of Mr. Tittel by Mr. Giannetti.
	Mr. Giannetti passed the witness. No further questions of this witness.
	Court inquired as to timing.
	Mr. Sayles addressed the Court and the Shikhar Ghosh deposition has been cut to 9 minutes and that is the only deposition being offered. Mr. Sayles will then call Then call Bakewell. Court and parties discussed rebuttal and timing.
	Court addressed the jury on the length of testimony. Court addressed the jury and will recess them until 1:00 pm.
11:20 am	Jury excused the jury for their lunch break.
	Mr. Adamo addressed the Court on the jury charge. Court will have it ready this afternoon. Court will hear objections this afternoon. Court and parties discussed
	Mr. Giannetti addressed the Court on the Motion to Strike. Court denied motion.
	Mr. Sayles addressed the Court on stipulations coming in as an exhibit. Court and parties discussed removing it from the charge and parties will offer the stipulations as an exhibit.
11:45 am.	Court in recess.
1:00 pm	Jury seated in the courtroom.
	Mr. Sayles called SHIKHAR GHOSH by Video Deposition. Video played for the Jury.
	Mr. Sayles called CHRIS BAKEWELL to the witness stand. Witness sworn by the clerk.
	Direct examination of Mr. Bakewell by Mr. Sayles. Mr. Satine asked to approach bench. (Bench Conference held). Court instructed jury.
	Direct examination of Mr. Bakewell by Mr. Sayles continued.
2:20 pm	Court in recess until 2:40 pm.
2:40 pm	Trial resumed. Jury not present in the courtroom. Court addressed the parties and asked the Clerk to tender to the parties copies of the charge. Court advised parties that it will take up objections to the charge later this afternoon.
	Court asked Jury to be brought into the courtroom. Jury seated in the courtroom.
	Cross examination of Mr. Bakewell by Mr. Satine.
	Mr. Satine passed the witness. Redirect examination of Mr. Bakewell by Mr. Sayles. Mr. Satine asked to approach the bench. (Bench Conference held). Redirect examination continued.
	Mr. Sayles passed the witness. Recross examination of Mr. Bakewell by Mr. Satine.
	Mr. Satine passed the witness. No further questions.
	Mr. Sayles offered Defendant's Exhibit 516 - Parties' Stipulations, which have been agreed to by the parties. Court gave the Jury a definition of stipulations. Without objection, Defendant's Exhibit #516 admitted.
	Mr. Sayles indicated that the Defendant Newegg rests.

	Court inquired of rebuttal testimony.
	Mr. Giannetti called MICHAEL SHAMOS to the witness stand. Witness previously sworn.
	Direct examination of Mr. Shamos by Mr. Giannetti.
4:20 pm	Court excused the jury for a recess until 4:35 pm.
	Court addressed the parties on the Jury's condition that they were tired and cautioned parties to put on their case and narrow it down.
4:25 pm	Court in recess for 15 minutes.
4:35 pm	Trial resumed. Jury seated in the courtroom.
	Direct examination of Mr. Shamos by Mr. Giannetti.
	Mr. Giannetti passed the witness. Cross examination of Mr. Shamos by Mr. Sayles.
	Mr. Sayles passed the witness. Redirect examination of Mr. Shamos by Mr. Giannetti.
	Mr. Giannetti passed the witness. No further questions of this witness.
	Mr. Adamo indicated the plaintiff rests and closes. Mr. Sayles indicated that the Defendant closed.
	Court addressed the Jury on the charge and closing arguments. Court will have lunch for the jury. Court reminded Jury of the Courts instructions.
5:40 pm	Court excused the jury for the evening.
	Court addressed the parties on Motions for JMOL.
	Mr. Adamo presented JMOL as to effective date of the '639 Patent and it effects the charge at 5.1, 5.1.1, 5.1.2 & 5.1.3. Ms. Frost agrees. JMOL granted. 5.1, 5.1.1, 5.1.2, & 5.1.3 is out of the charge. Mr. Adamo addressed the Court regarding 5.3 on obviousness (pgs 19-24). Ms. Frost objects and presented argument. Mr. Adamo responded as to the law that parties need expert opinion testimony on obviousness. Ms. Frost responded. Mr. Adamo further responded. Court has until 7:00 pm to file any additional briefing. Court will take under advisement.
	Mr. Adamo presented JMOL on anticipation. Ms. Frost responded. Mr. Adamo further responded. Ms. Frost responded. Mr. Baldauf responded. Mr. Adamo further responded. Mr. Baldauf further responded. Mr. Adamo further responded. Court will consider this one as well and take under advisement.
	Soverain JMOL is denied as to anticipation or obviousness.
	Ms. Frost has 3 JMOLS on damages, invalidity and non-infringement and will rest on the papers. Court denies JMOLS as to non- infringement, damages and infringement.
	Court inquired as to objections to the charge.
	Mr. Adamo addressed the Court on 5, 5.2, 5.3.
	Ms. Frost addressed objections to the Court's charge, specifically language not included as requested in Dkt #360. Court asked for specific objections.
	Ms. Frost objects to language on Page 8, 4.1, last sentence, and asked that "reasonably" be removed. Mr. Adamo responded. Objection overruled.

	Ms. Frost objects to language top of Page 9, objects and instead would like the specific instruction that Newegg submitted in Dkt #360. Ms. Frost suggested proposed language. Mr. Adamo responded. Ms. Frost further responded. Court and parties continued to discuss. Court overruled objection. Court and parties discussed second paragraph under 4.1.
	Ms. Frost addressed the Court regarding doctrine of equivalents at end of Page 9 and suggested proposed language. Mr. Adamo responded. Objection overruled.
	Ms. Frost addressed the Court on Page 16, active inducement, which is subject to JMOL. Court has ruled on that.
	Ms. Frost addressed the Court on Page 16 under 5.2. Court overruled objection.
	Ms. Frost addressed the Court on Page 16, bottom the page – the language in parenthesis. Mr. Adamo agrees.
	Ms. Frost addressed the Court on Page 18 under 5.2.2 – the language in parenthesis. Language to be deleted.
	Ms. Frost addressed the Court on Page 23 under 5.3.3 and requested language under <i>KSR</i> be included. Mr. Adamo responded. Objection overruled.
	Ms. Frost addressed the Court on Page 24, under 5.3.4, items 7 & 9 and proposed additional language. Objection overruled.
	Ms. Frost addressed the Court on Page 24, under 5.4, corroboration is not necessary. Mr. Adamo responded. Objection overruled.
	Ms. Frost addressed the Court with respect to Damages and has a specific request dealing with entire market value rule. Ms. Frost tendered proposed language to the Court. Mr. Adamo responded. Ms. Frost further addressed the Court. Court denied request.
	Court and parties discussed closing arguments. Parties and Court discussed. Both sides will have an hour.
	Court addressed the parties on the charge and handing copies to the Jury. Court will cover the main parts, but will just reference the Jury to other parts. Mr. Sayles does not have a problem with the way it was done in the VirnetX trial. Mr. Adamo responded.
	Court asked parties to get all exhibits together and get an exhibit list to submit to the Jury.
	Court complemented counsel on a well-trying case and advised the parties how much time they used for trial. Plaintiff used 11 hours and 15 minutes. The Defendant used 10 hours and 30 minutes.
6:25 pm	There being nothing further, Court adjourned for the day.